

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

RESERVED ON : 17th September, 2013

DECIDED ON : 22nd November, 2013

+ CRL.A. 491/2000

SATYA DEV PANDEY & ANR.

..... Appellants

Through : Mr.D.M.Bhalla, Advocate.

VERSUS

STATE

..... Respondent

Through : Mr.Lovkesh Sawhney, APP.

CORAM:

MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. Satyadev Pandey (A-1) and Ramji Pandey (A-2) impugn a judgment dated 05.08.2000 of learned Additional Sessions Judge in Sessions Case No.282/1997 arising out of FIR No.697/1996 registered at Police Station Patel Nagar whereby they were convicted under Sections 308/323/34 IPC. By an order dated 09.08.2000 they were awarded Rigorous Imprisonment for five years with fine ₹10,000/- each under Section 308/34 IPC and Rigorous Imprisonment for one year with fine ₹1,000/- each under Section 323/34 IPC. Both the sentences were to operate concurrently.

2. Allegations against the appellant were that on 15.08.1996 at about 03.30 P.M. at House No.2099/6A, Gali No.15, Pahari, Prem Nagar, Delhi, they in furtherance of common intention inflicted injuries to Krishan Dev Singh, Nand Kumari and Kaushal. The police machinery came into motion when DD No.30B (Mark 'A) was recorded at Police Station Patel Nagar at 03.57 P.M. on getting information from PCR about a quarrel at House No.2103, Gali No.15, Prem Nagar. The investigation was assigned to HC Pritpal Singh who with Ct.Bhim Sain went to the spot i.e. House No.2099/6A, Gali No.15, Pahari, Prem Nagar, Delhi, and came to know that the injured had already been taken to DDU hospital. Kaushal Kumar who was injured in the occurrence was shifted to RML hospital. The Investigating Officer collected their MLCs and lodged First Information Report after recording Krishan Dev Singh's statement (Ex.PW1/A). During investigation, statements of witnesses conversant with the facts were recorded. The appellants were apprehended and arrested. After completion of investigation, a charge-sheet was filed in the court in which A-1 and A-2 were duly charged and brought to trial. The prosecution examined 13 witnesses. In their 313 statements, the appellants pleaded false implication. DW-1 (Krishan Murari Tiwari) and DW-2 (Dhruva Singh) were examined in defence. On appreciating the

evidence and after considering the submissions of the parties, the Trial Court by the impugned judgment convicted both the appellants for the offences mentioned previously. It is significant to note that the trial court did not take cognizance against Jashoda who was kept in Column No.2 in the charge-sheet. In the order on charge dated 12.01.1999, the Trial Court left the question open as Additional Public Prosecutor intended to move application under Section 319 Cr.P.C. No such application was moved during trial. It is further relevant to note that the Trial Court deprecated Investigating Officer for not proceeding against Shiv-Poojan who was implicated by the prosecution witnesses in their statements recorded under Section 161 Cr.P.C. The learned Additional Public Prosecutor again expressed his willingness to move an application under Section 319 Cr.P.C. after the evidence was recorded in the court. However, no such application was ever moved during trial.

3. Learned counsel for the appellants urged that the Trial Court did not appreciate the evidence in its true and proper perspective and fell into grave error in relying upon the testimonies of interested witnesses who had inflicted injuries to the accused persons and against whom a complaint case was pending in the court of learned Metropolitan Magistrate in which they were summoned. The prosecution was unable to

establish genesis of the quarrel and was not able to establish that the appellants used to supply electricity to the complainant or other neighbours. Vital discrepancies, omissions and improvements in the evidence of the prosecution witnesses were ignored without valid reasons. The prosecution witnesses narrated inconsistent version as to the role of the appellants; the exact place of occurrence; the exact timings and the manner in which the incident took place. Counsel adopted alternative argument to take lenient view in the event of dismissal of appeal as the appellants had already remained in custody for more than four months for the incident occurred in 1996. Learned Additional Public Prosecutor urged that the testimony of all the eye-witnesses including that of PW-4 (Kaushal Singh) who was deaf and dumb is consistent and minor contradictions or improvements which do not affect the core of the prosecution case are not of that magnitude to discard their version in entirety.

4. The occurrence took place at around 03.30 P.M. on 15.08.1996 in which Krishan Dev Singh, Nand Kumari and Kaushal suffered injuries and were taken to Deen Dayal Upadhaya hospital. MLC (Ex.PW-11/A of Kaushal) records arrival time at the hospital as 04.40 P.M. DD No.30B (Mark A) was recorded at 03.57 P.M. regarding

quarrel at House No.2103, Gali No.15, Prem Nagar, Delhi. The Investigating Officer recorded victim's statement (Ex.PW-1/A) and lodged First Information Report at 07.40 P.M. after making endorsement (Ex.PW-1/A) over it. Krishan Dev who sustained simple injuries on nose was conscious and oriented and was not admitted in the hospital. In his statement made to the police at the first instance, Krishan Dev Singh gave graphic detail of the incident and implicated only A-2 for inflicting injuries to them. He also narrated the genesis of the quarrel i.e. appellants' refusal to return the amount paid by the complainant and other neighbours for supplying electricity to them. The complainant, however, did not attribute any role to A-1 in the occurrence and even did not claim his presence at the spot. It appears that subsequently supplementary statement of the complainant was recorded on 16.08.1996 in which he implicated A-1 and one Shiv Poojan for inflicting injuries and instigating A-2. The complainant did not give any plausible reason as to why A-1 and Shiv Poojan were not named at the first instance in the FIR. In the case of *Jail Prakash Singh v.State of Bihar & Anr.* 2012 CRI.L.J.2101 the Supreme Court held:-

“The FIR in criminal case is vital and valuable piece of evidence though may not be substantive piece of evidence. The

object of insisting upon prompt lodging of the FIR in respect of the commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of actual culprits and the part played by them as well as the names of eye-witnesses present at the scene of occurrence. If there is a delay in lodging the FIR, it loses the advantage of spontaneity, danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of large number of consultations/deliberations. Undoubtedly, the promptness in lodging the FIR is an assurance regarding truth of the informant's version. A promptly lodged FIR reflects the first hand account of what has actually happened, and who was responsible for the offence in question."

5. The prosecution examined all the injured and one Shakuntala, an eye-witness, in the court. They have narrated inconsistent and conflicting version regarding the role played by A-1 in the occurrence. The complainant-Krishan Dev Singh deposed that when he, his wife, Ganga Ram and other neighbours went to Jashoda Devi to lodge complaint for not providing them electricity or else to refund their charges paid in advance, A-2 and his wife abused them and declined to refund the money. Thereafter A-2 gave a danda blow on Nand Kumari's arms and legs. When he intervened, he was inflicted with lathi blows. A-1 standing nearby threw a stone upon him which hit on his nose. When his nephew Kaushal, who was deaf and dumb came there, he was given danda blows on his face by A-2 along with other persons namely Shiv Poojan etc. He

further deposed that A-1 caught hold of him and A-2 gave a lathi blow on his body. Accused Shiv Poojan too had exhorted A-2 to kill them. PW-2 (Nand Kumari) deposed that on 14.08.2013 at about 04.00 P.M. she along with her neighbours had gone to complain disconnection of electricity facility to them. A-1 and A-2 present in the house abused them and she came back. On 15.08.1996, when they had gone to the accused persons to demand their money back or to supply electricity to them, A-2 suddenly picked-up a lathi and hit her on left hip. A-1 and Shiv Poojan also joined him. When her husband Krishan Dev intervened, he was beaten up and he received injuries on nose. Kaushal who arrived at the spot was also beaten up with lathi on his face. PW-4 (Kaushal Singh) implicated only A-2 for assaulting him by a danda or an iron rod on his head, chest and face. PW-3 (Shakuntala) testified that when they had gone to the house of the accused persons to demand their money back, A-2 brought a lathi from house and hit two blows on Nand Kumari's body. When her husband and nephew arrived, both the accused gave beatings to them with lathi, hockey and fist etc. On scrutinizing the statements of all these ocular witnesses, it reveals, that they have given contradictory and conflicting statements regarding the role played by A-1 in the occurrence.

Their statements are not at tandem with the complaint lodged by the

complainant at the earliest with the police. No crime weapon was recovered during investigation. In my considered view the prosecution was not able to establish if any specific role was played by A-1 in inflicting injuries to the victims. Shiv Poojan's involvement was not investigated and no charge-sheet or application under Section 319 Cr.P.C. was moved against him. These witnesses have, however, in unison deposed that the real assailant who caused injuries to them was A-2. There are no valid or sound reasons to disbelieve the statements of injured witnesses to that extent. Despite searching cross-examination, no material discrepancies or contradictions could be elicited on this score. In his 313 statement A-2 miserably failed to establish the plea of alibi and the defence was out-rightly rejected by the Trial Court. DW-1 (Krishan Murari Tewari) and DW-2 (Dhruva Singh) claimed on 15.08.1996 the injured persons had given beatings to A-1 there. They also admitted that Kaushal sustained injuries on head but it was due to fall from the roof. Krishan Dev and Nand Kumari sustained injuries due to damaged cement roof. The accused persons did not produce any medical evidence to substantiate that any injuries were caused to them in the said occurrence. In my considered view the prosecution was able to establish beyond doubt that A-2 was the author of the injuries to the victims.

6. The prosecution did not produce the examining doctors who prepared the MLCs to ascertain the nature of injuries sustained by the victims. PW-11 (J.C.Vashist), record clerk, D.D.U.hospital and Kartar Singh PW-12, Record Clerk, RML hospital were examined to prove the MLCs Ex.PW-11/A (prepared by Dr.Rakesh Saha of PW-4- Kaushal) and Ex.PW-12/A (prepared by Dr.Pankaj of PW-2-Nand Kumari). They identified signatures of the concerned doctors on the MLCs. In the cross-examination, they admitted that neither MLCs were prepared nor the patients were examined in their presence. No attempt was made by the prosecution to find out the whereabouts of the examining doctors. Again the prosecution did not bother to examine any other competent doctor to give opinion on the basis of the MLCs regarding the nature of injuries sustained by the victims. PW-1 (Krishan Dev Singh) and PW-2 (Nand Kumari) sustained simple injuries by blunt object. The nature of injuries on the person of Kaushal does not find mention in the medical documents exhibited during trial. The prosecution could not recover the crime weapon. It has come in evidence that earlier to the incident, the victims and A-2 were acquainted with each other and lived in the same locality. There is no history of hostile relations between them. A dispute arose due to non-supply of electricity to the victims and other neighbours as per

previous arrangements and when the appellants declined to refund the money collected for supply of electricity. Apparently, it was a sudden quarrel without any pre-planning and pre-meditation. No deadly weapons were used in the incident. Offence punishable under Section 308 postulates doing of an act with such intention or knowledge and under such circumstances that if one by that act caused death, he would be guilty of culpable homicide not amounting to murder. An attempt of that nature may actually result in hurt and may not. In the instant case, the initial confrontation had taken place with PW-1, PW-2 and other neighbours. PW-4 (Kaushal) was not present at scene at the time of the said altercation and his visit to the spot was sudden and unexpected. When he intervened in the quarrel to support his relatives, he suffered injuries in a sudden scuffle. A-2 cannot be held liable for committing offence under Section 308 IPC. The prosecution, however, succeeded to prove and establish that A-2 voluntarily caused simple hurt with blunt object to PW-1, 2 and 4. A-2's conviction stands altered from Section 308/34 IPC to Section 323/34 IPC. A-2 was ordered to undergo Rigorous Imprisonment for five years with fine ₹10,000/- under Section 308/34 IPC and Rigorous Imprisonment for one year with fine ₹1,000/- under Section 323/34 IPC. Appeal file reveals that A-2 remained in custody before enlargement on bail vide

order dated 13.12.2000 for more than four months. Nothing has come on record that A-2 had criminal antecedents or was involved in any criminal case after enlargement on bail. The occurrence pertains to the year 1996. A-2 has suffered ordeal of trial/appeal for about 17 years. Considering these mitigating circumstances, A-2 is ordered to be released for the period already undergone by him in custody in this case. He shall, however, pay the unpaid fine (if any). Since PW-4 (Kaushal) aged about 27 years at the time of incident, who was deaf and dumb suffered injuries and remained admitted in hospital for five days, A-2 is further directed to pay Rs.50,000/- as compensation to him. A-2 shall deposit this amount and fine amount (if any) within 15 days in the Trial Court and it shall be released to PW-4 (Kaushal) after notice. Benefit of doubt is extended to A-1 and his conviction and sentence are set aside.

7. The appeal stands disposed of in the above terms. Trial Court record be sent back forthwith along with the copy of this order. Copy be also sent to Superintendent Jail for intimation.

(S.P.GARG)
JUDGE

November 22, 2013
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